

Taking Charge

Hands-On Judge Brings His Approach to ADR

By Susan McRae

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IRVINE - James P. Gray would be the first to call himself an activist - as a judge, a community leader and now as an ADR neutral.

But not in the sense of someone who doesn't follow the law or who makes new ones. That's not Gray.



"In fact," says Gray, 65, who retired from the Orange County Superior Court a year ago and joined ADR Services Inc., "I enforce laws, even if I don't agree with them.

"I don't have to do it quietly, but I do follow them. Sometimes, I even apologize."

To Gray, the word activist connotes someone who is active. For the past quarter century, he has been actively speaking and writing his mind.

He's contributed a weekly column in a local newspaper, the Daily Pilot, for the past 2½ years on subjects he ardently supports. They range from the decriminalization of drugs (He started the nation's first drug court when he joined the bench in 1983.) to the metric system to providing bleach kits to addicts for sterilizing needles, something he was able to convince the Orange County Board of Supervisors to do.

His outspokenness has drawn support from those of like minds and opposition from those who disagree with his views or find him too opinionated.

"Basically, I still see myself as a Peace Corps volunteer," Gray said, referring to his 2-year stint with the organization in Costa Rica between college and law school, "and I'm still trying to, in my naïve or idealistic state, do what I can to help my country and the people in it."

He ran for office twice. He challenged Republican Rep. Bob Dornan for his congressional seat in 1998 and ran against Democratic Sen. Barbara Boxer in 2004. He switched political parties in 2002, from Republican to Libertarian, because of his opposition to the Patriot Act. He's working on his third book. The first in 2001 is titled, "Why Our Drug Laws Have Failed and What We Can Do About It." His second, "Wearing the Robe," published in 2009, talks about the art and responsibilities of

judging. His latest, "A Voters' Handbook," makes a case for why the United States should join the majority of free world nations in converting to the metric system.

He's also written a teen musical called, "Americans All," about the importance of education, which has debuted at a high school in Orange County and one in Georgia and is set for a wider opening soon. And, he has begun research on his next musical, for Broadway, that involves an historic theme.

As an ADR neutral, his activity hasn't waned.

As a judge, Gray had a lot of success with settlement conferences. He would hold five in the morning and four in the afternoon. And he'd settle them all.

When he signed on with ADR Services and was told it had reserved eight hours for him to conduct a mediation, he said: "Fine, but what am I going to do with all that time?"

Gray uses a hands-on approach to his ADR work - sometimes resulting in the same polarizing reactions his other activities have generated.

Some say they appreciate his forceful involvement in helping bring a matter to a resolution. But one lawyer, who asked not to be named, said he thought Gray was "far too opinionated as a mediator."

Gray said that isn't the way he would phrase it but agreed he takes an active role.

"I think if you are going to talk to people who want to settle their cases, they want you to be active," Gray said. "I'm not running for office. I'm not trying to please everybody. You want somebody who is active.

"Sometimes I irritate people. That means I take a position sometimes that they don't like. I'm sorry. I'm probably vulnerable to that. But I'm an activist."

In mediations, Gray will tell it like he sees it. He'll point out weaknesses in a case and emphasize the risk of going before a jury. He's also mindful of the diplomacy needed in getting one side to admit fault, and in the psychology of numbers. Frequently, he said, he can get people to settle a case for \$78,500, when they never would agree to \$80,000.

Gray also makes it clear that what mediations try to do is resolve cases, not solve them. In mathematics you can solve a formula, he said, but in human interactions, there are no solutions. Only resolutions.

"You just got banged up because someone went through a red light, and you've lost an arm," Gray said by way of example. "I'm sorry. There's no solution to that. I can give you money. That's a resolution. I can give you \$1 million. You'd still rather have your arm back, but that's just not in the cards.

"All we can do is resolve this, prop you up, dust you off, aim you in the right direction

and get you to go on with your life. And people need to understand that."

In arbitrations, Gray said, his decisions are based strictly on the evidence. He does one unusual thing, in that after letting the attorneys question the witnesses, he will take over and ask questions, something he also did as a judge. He also will issue preliminary decisions, giving attorneys a chance to respond, which sometimes has changed his mind.

Milford W. Dahl Jr., a litigation partner at Rutan & Tucker in Costa Mesa, has appeared before Gray in mediation, as well as in trials when he was on the bench. He described Gray as a thoughtful, deep thinker, who believes strongly in settling cases.

"He can be very strong without being a jerk," Dahl said. "He's very considerate and polite to witnesses and counsel. He's not afraid to take charge but does it in a very professional way. He is very much a believer in parties resolving conflicts."

Andrew J. Guilford, a former partner at Sheppard, Mullin, Richter & Hampton and now a federal judge, calls Gray "a talented man across the board in an array of experiences." While he disagrees with some of his opinions, Guilford said, he admires someone who has opinions. In fact, Gray devoted one of his columns in the Daily Pilot to Guilford's disagreements.

In mediations, Guilford said, he strongly favors "activist mediators," meaning someone who is going to work hard to settle a case, come to conclusions and express those conclusions. Gray, Guilford said, does that with compassion and understanding.

"Too many people today don't make decisions," Guilford said. "Judge Gray makes decisions but tempers that pushing hard with a sense of fairness and with a sense of intelligence."

Gray is the son of William P. Gray, who was a federal judge in Los Angeles. He earned his law degree in 1971 from USC Gould School of Law. He served in the U.S. Navy's Judge Advocate General Corps in Guam and Lemoore Naval Air Station in California. After his discharge, he spent three years as a federal prosecutor in Los Angeles and another five as a business litigator at Wyman, Bautzer, Rothman Kuchel & Silbert before Gov. George Deukmejian appointed him to the bench.

Gray has four children. His wife, Grace Walker Gray, a physical therapist, operates a physical therapy and pain center in Orange County.

Here are some of the lawyers who have used Gray's ADR services: Clifford E. Frieden, Rutan & Tucker, Costa Mesa; David S. McLane, Kaye, McLane & Bednarski; Steven R. Young, Costa Mesa; Kenny Kean Tan, Diamond Bar; Michael C. Chou, Howrey, Irvine, Milford W. Dahl Jr., Rutan & Tucker, Costa Mesa